



Battle Creek Zoning Board of Appeals

Staff Report

Meeting: January 12, 2010
Agenda Item: 5. A.

To: Zoning Board of Appeals
From: Glenn Perian, Senior Planner
Subject: Petition for a dimensional variance (Z-1-10) to permit the construction of a 6 foot fence in the front yard at 584 E. Hamilton Lane, Parcel #4260-07-971-0.

Summary

This report addresses a petition from John Scott seeking approval of a Dimensional Variance (Z-1-10), to construct a 6 foot fence in the front yard of a residential property located at 584 E. Hamilton Lane. Zoning of the property is R-1B "Single Family Residential District."

Background/Project Information

The subject site is located at 584 E. Hamilton Lane. The residential lot is irregularly shaped and would be best described as "pie shaped". The lot essentially has three sides with street frontage on two sides of the lot and a shared side lot line with a neighboring property to the north. The parcel meets the minimum lot standards for frontage and area for the R1-B zoning district and would be described as relatively flat. Chapter 1298.05 of the Fence Code GENERAL PROVISIONS BY ZONING DISTRICT (b) Residential Districts (2) states that "In a front yard, twenty-five feet or less from a street right of way, fences or hedges shall not exceed four feet in height. Fences between twenty-five feet of the right of way and the first supporting member of the main structure shall not exceed five feet in height..." and 1298.05 (b)(4) Except on properties having frontage on a lake, river, creek, or other waterway, double frontage lots shall be fenced in accordance with the following provisions: A. The yard fronting on the street of the property's postal address shall be fenced in accordance with paragraph (b)(2) hereof. B. Side yard fences on interior lots may be erected to a height of six feet. C. The remaining property shall be considered a rear yard for fencing purposes, except that in the twenty-five feet or less from the rear street right of way, fences shall not exceed four feet in height... (Please see attached diagram that outlines these zoning regulations for this specific property, attachment #4) The request is to allow a six foot tall fence to remain in the rear portion of the lot within the 25' portion of the lot where only a 4' fence is allowed.

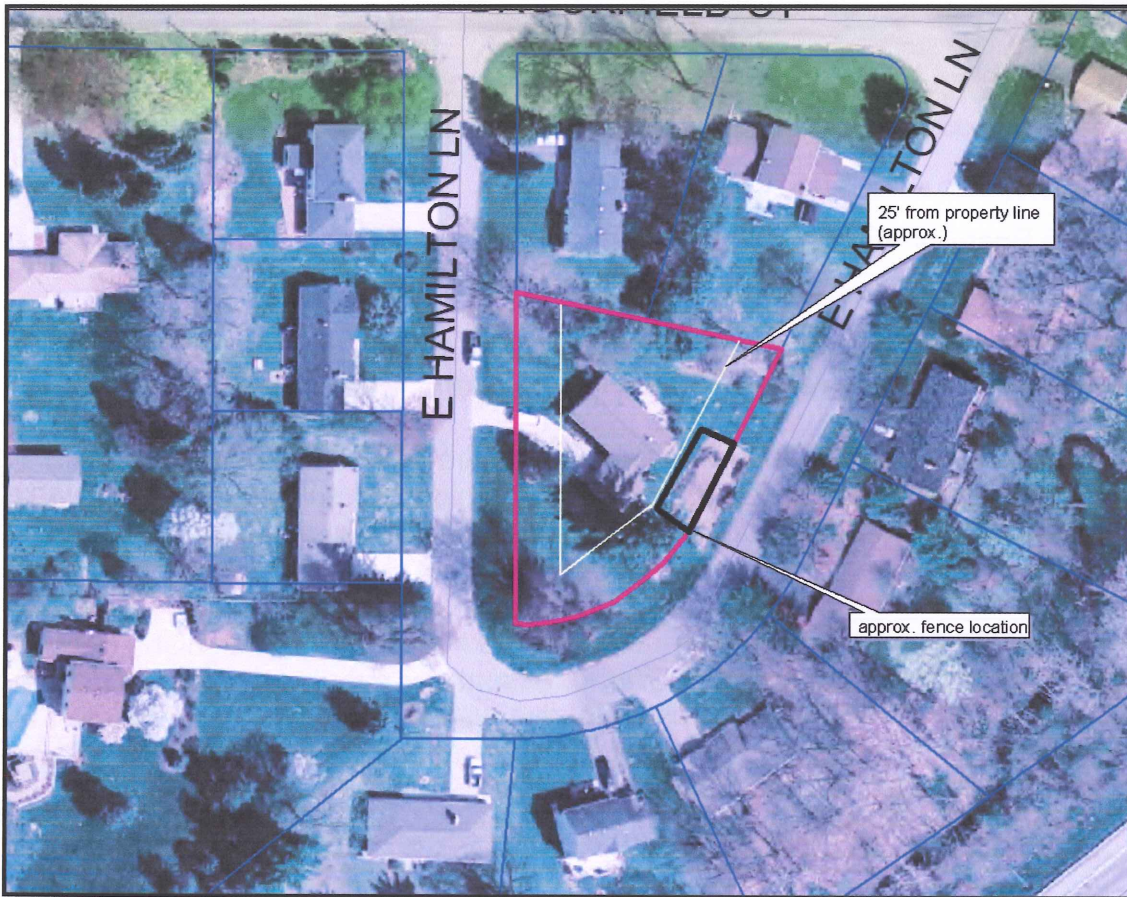
Legal Description

INWOOD LOT 21

Public Hearing and Notice Requirements

An advertisement of this public hearing was published in the Battle Creek SHOPPER NEWS on Wednesday, December 23, 2009 – not less than the 15 days before the hearing as required by State Law and ordinance.

Notices of the public hearing were also sent by regular mail on December 21, 2009 to 22 properties located within 300 feet of the subject parcel.



Aerial Photograph of the Subject Site

Surrounding Land Uses

The subject property is located on a pie shaped lot in a residential neighborhood.

Applicable Zoning Ordinance Provisions

Chapter 1234.04 (b) (1) authorizes the Zoning Board of Appeals to grant variations in the yard requirement of any district where there are unusual and practical difficulties in the carrying out of the requirements of the Zoning Code due to the irregular shape of the lot or topographical conditions, provided that such a variation will not seriously affect any adjoining property or the general welfare of the public; and

Chapter 1234.04 (b) (2) authorizes the Zoning Board of Appeals to grant variations, upon appeal, whenever a property owner can show that strict application of the provisions of the Zoning Code relating to the use of buildings or structures or to the use of land will impose upon them unusual and practical difficulties or hardship. This section requires that such variations of the strict application of this Zoning Code as are in harmony with its general purpose and intent, but only when the Board is satisfied that a granting of such variation will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship or difficulty so great as to warrant a variation from the Master Plan, as

established by the Zoning Code, and that the surrounding property will, at the same time, be properly protected.

Analysis

The Appellant is requesting a variance that would authorize the existing 6' tall fence to remain in its current location in the rear yard of the property at 584 E. Hamilton Lane. The current fence does not comply with the provisions of the fence ordinance for height and the Appellant has stated that the fence is needed to protect a garden from feeding deer. Aerial photos of the property would indicate that a variance is required for the entire 6' wire fence surrounding the garden. Note; the overall height of the fence is 6' including the knee wall.

The Appellant's has supplied reasons supporting the request for appeal and they are included with the application and part of this report. Part of their reasoning includes a statement saying "...The deer would jump over the fence and I have no official back yard" and "the fence is see through. It does not obstruct anyone's view." Staff has received complaints from adjacent property owners that seem to center around the Applicants use of the property as a garden. The City does not have the authority to regulate the garden, its size, its location, etc.

Is there something unique about this lot or property that makes relief necessary? The property is approximately one half acre in size and meets the minimum lot area and width requirements for the R-1B zone. As stated previously, the lot is pie shaped and subject to zoning regulations for 3 front yards, is relatively flat, with no noticeable grade change.

The Appellant's complete stated practical difficulty is included in this report. Members of the Zoning Board of Appeals know that we will always try to help identify specific elements of a "practical difficulty" where we feel that relief is warranted. We believe that there is an unusual and practical difficulty specific to this property in question due to the unusual shape of the lot and how it is situated between two adjacent streets. We do not think that the proposed fence will seriously affect adjoining property owners or the general welfare of public and we think the property will still be harmonious with the general purpose and intend of the R-1B zoning district if the variance is granted for the fence.



Various photos of existing fence

FINDINGS

In consideration of all variations from the Zoning Code, the Board shall, before making any such exceptions or variations, in a specific case, first determine that the conditions listed below are satisfied. Planning staff has reviewed these conditions and believe that each condition can be justified in an affirmative manner. We have provided a rationale for each condition set forth below for Dimensional Variances:

- 1) Staff finds that there is an unusual and practical difficulty specific to the property in question due to the irregular shape of the lot which is situated between two adjacent right of ways in this particular case.
- 2) Granting the variance and thereby permitting the applicant to move forward with the project in spite of the fact it is not in compliance with the zoning ordinance will not seriously affect any adjoining property or the general welfare of the public in that the proposed fence is hardly visible, as shown by photo and verified by site visits.
- 3) Staff believes that if the variance in question is granted the property will still be in harmony with the general purpose and intent of the R-1B zoning district in that fences are permitted in rear yards of residential properties and a fence of this nature is a property right offered to all residents. The Applicant is not requesting beyond what a majority of other property owners are allowed to do.
- 4) Staff believes that if the Zoning Board grants the variance, the height of the fence will not serve merely as a convenience to the applicant and will alleviate some demonstrable practical difficulty so great as to warrant a variation to the Master Plan and the surrounding property will, at the same time be protected in that the proposed see through fence is one of the least obstructive materials that could be used in this case.

If the Zoning Board finds that all of the above conditions have been satisfied, then all of the following standards must be met, as well.

- 1) Staff thinks that the Appellant has clearly demonstrated that practical difficulty will in fact exist if the variance is not granted in that the subject property has road frontage on three sides of the lot and does not have a conventional rear yard.
- 2) Staff believes that the appellant has not created the practical difficulty associated with this request. The subject site is a unique lot in an approved subdivision.
- 3) Staff believes that the practical difficulties are exceptional and peculiar to the property of the person requesting the variance for the reasons stated in item #1 above.
- 4) Staff believes that the alleged practical difficulties result from conditions which do not generally exist throughout the City in that most residential lots are interior lots. Furthermore, most corner lots typically have road frontage on only two sides of the lot, not three, as in this case.

- 5) The Appellant has furnished documentation to indicate that practical difficulties do, in fact, exist and Staff thinks that the furnished documentation relative to the unique shape and location of the lot meets the standards outlined in the Zoning Code authorizing the Board to grant the variance.
- 6) Staff does not believe the term "practical difficulty" is deemed financial hardship in this case.
- 7) Staff believes the alleged practical difficulty which will result in a failure to grant the variance is substantially more than a mere inconvenience in this case. As stated previously, the lot has street frontage on three sides.
- 8) Staff thinks that by allowing the variance will result in substantial justice being done, considering the public benefits intended to be secured by the Zoning Code, the individual practical difficulties that will be suffered by a failure of the Board to grant a variance and especially the rights of others whose property would be affected by the allowance of the variance.
- 9) Every finding of fact of the Board shall be supported in the record of proceedings of the Board.
- 10) Nothing contained in this section shall be construed to authorize the Board to change the terms of this Zoning Code.

Recommendation

The Zoning Board of Appeals can approve, approve with conditions, or deny this request. The Zoning Board of Appeals can also table or postpone the request pending additional information. The Planning staff recommends that the Zoning Board of Appeals approve the Dimensional Variance (Z-1-10) based on the above listed findings contained in this staff report with conditions.

Conditions of Approval

C1: That the fence will remain of similar material (deer fence) and will not be replaced or covered with a fence or material of greater opacity to ensure that fining #2 will remain in effect (will not seriously affect any adjoining property or the general welfare of the public.

Attachments

The following information is attached and made part of this Staff Report.

1. ZBA Petition Form (Petition #Z-1-10)
2. Document titled "Dimensional (Non Use) Variance-November 2009" provided by City Attorney's Office
3. General property information from City Assessing records
4. Sketch of fence heights allowed per ordinance for pie shaped lots
5. Email correspondences and photos from neighbors opposing the appeal

Date: 12-17-09

Appeal No. 2-1-10

**APPLICATION FOR A VARIANCE
ZONING BOARD OF APPEALS**

City of Battle Creek Michigan

An Appeal to the Zoning Board of Appeals to authorize a variance from the requirements of the Planning and Zoning Code (Part Twelve) of the City of Battle Creek.

Name of Appellant: John Scott

Address: 584 E Hamilton Ln 49015 Phone: 269 275-2952

Name of Owner (if different from Appellant): _____

Address: _____ Phone: _____

TO THE ZONING BOARD OF APPEALS: Request is hereby made for permission to:
(Choose One) Extend Erect Waive Use Convert Enclose

contrary to the requirements of Section(s) 1298.05(b)(2) of the Planning and Zoning Code, upon the premises known as 584 E. Hamilton Battle Creek, MI, in accordance with the plans and/or plat record attached.

The proposed building or use requires Board action in the following area(s):

6 FT Fence Front Yard

Property/Tax I.D.# No. 4260 - 07 - 971 - 0

Size of the Lot: Width 145 ft. Depth 150 ft. See attached
Size of Proposed Building: Width _____ Depth _____ Height _____

The following reasons are presented in support of this appeal (complete each section):

- a) This property cannot be used in conformance with the ordinance without the requested variance because:

the deer could jump over the fence AND I HAVE NO OFFICIAL BACK YARD

- b) This problem is due to a unique situation not shared in common with nearby property owners because:

The way the house is positioned on the lot (there is no backyard)

- c) Granting the variance would not alter the essential character of the area because:

the fence is see through. It does not obstruct anyone's view.

- d) The problem is not self-created because:

I can not control the animal population.

- e) **USE VARIANCES ONLY** It is not possible to use this particular property for any other use currently allowed in the zoning district because:

I hereby affirm that, to the best of my knowledge, all the above and accompanying statements and drawings are correct and true. In addition, I give permission to the City of Battle Creek's Planning Department staff to access my property, if necessary, to take photographs of the subject of this appeal.

John Scott IV

(Print Appellant Name)

John Scott IV

(Signature of Appellant)

584 E HAMILTON LN

(Address of Appellant)

If you require additional information or assistance in filling out this application, please contact the Planning Department at (269) 966-3320.

Dimensional (Non Use) Variance – November 2009

1. Is there a practical difficulty in carrying out the requirements of this Zoning Code (i.e., must have 25 foot side yard setback) due to the irregular shape of the lot or topographical or other condition? (§1234.04 (b)(1))
 - a. If there is an **unusual** and **practical difficulty specific to this property in question** due to the **shape of the lot, topographical conditions** or something else unique to the land, **not unique to the particular applicant**, then the variance standards have been met **THUS FAR** and further consideration to below #2 is warranted.
 - b. If there is **NOT** an unusual and practical difficulty specific to this property in question, then the variance does not meet the standards and should **NOT** be granted.
2. Will granting the variance and thereby permitting the applicant to move forward with project in spite of the fact it is not in compliance with the zoning ordinance seriously **affect any adjoining property or the general welfare of the public?** (§1234.04 (b)(1))
 - a. If it will seriously affect any adjoining property or the general welfare of the public, then the variance does not meet the standards and should **NOT** be granted.
 - b. If it will not seriously affect any adjoining property or the general welfare of the public, then the variance does meet the standards **THUS FAR** and further consideration of below #3 is warranted.
3. If you grant the proposed variation(s) to the zoning ordinance in question, will the property still be harmonious with the general purpose and intent of the particular zoning district? (§1234.04 (b)(2))
 - a. If the property will still be harmonious with the general purpose and intent of the zoning district in spite of the variance, then the variance standards have been met thus far and further consideration to below #4 is warranted.
 - b. If granting the proposed variance will make it such that the property is no longer harmonious with the general purpose and intent of the particular zoning district, then a variance is not appropriate and it should **NOT** be granted.
4. Are you satisfied that if the Board grants the variance, it will not merely serve as a convenience to the applicant but will alleviate some demonstrable practical difficulty so great as to warrant a variation from the master Plan and the surrounding property will, at the same time be protected? (§1234.04 (b)(2))
 - a. Granting the variance cannot merely serve as a convenience to the applicant. If it is a convenience, (i.e., saves the applicant money), then it does not meet the

standard and should not be granted. If yes, then move to below 4b for further consideration.

- b. Will granting the variance alleviate some demonstrable practical difficulty so great that it warrants varying from the Master Plan? If it is not going to alleviate a demonstrable practical difficulty, then it is not so great that it warrants a variation. If it will alleviate a demonstrable practical difficulty, then standards are met thus far and move to below 4c for further consideration.
 - c. If you grant the variance request, will the surrounding property still at the same time be properly protected? If not, then the standards have not been met and the variance request should be denied. If the surrounding property will still be properly protected, then the standards have been met thus far and before granting the variance, you must determine that ALL OF THE BELOW STANDARDS (1) through (8) HAVE BEEN MET, AS WELL: (§1234.04 (c))
- (1) It can be clearly demonstrated by the petition that practical difficulty will, in fact, exist if such variance is not granted. (Already considered this at above paragraph #1a and found it existed or could not have moved forward.)
 - (2) The appellant has **not** created the practical difficulty.
 - (3) The alleged difficulties are exceptional and peculiar to the property of the person requesting a variance. (Already considered in above paragraph #1a.)
 - (4) The alleged practical difficulties result from conditions which do not generally exist throughout the City.
 - (5) The applicant been prepared to furnish documentation to indicate that practical difficulties do, in fact, exist.
 - (6) The phrase "practical difficulty" shall not be deemed financial difficulty.
 - (7) The alleged practical difficulty which will result from a failure to grant the variance is substantially more than a mere inconvenience or a mere inability to attain a higher financial return.
 - (8) Allowing the variance will result in substantial justice being done, considering the public benefits intended to be secured by this Zoning Code, the individual practical difficulties that will be suffered by a failure of the Board to grant a variance and especially the rights of others whose property would be affected by the allowance of the variance. (Covered in above 1, 2 and 3 however the term "substantial justice" was not previously used.)

General Property Information

[\[Back to Non-Printer Friendly Version\]](#) [\[Send To Printer\]](#)

Parcel: 4260-07-971-0

| | |
|--|----------------------------|
| Property Address | [collapse] |
| 584 E HAMILTON LN BATTLE CREEK, MI 49015-4742 | |

| | |
|--------------------------|----------------------------|
| Owner Information | [collapse] |
| SCOTT,JOHN III N/A | Unit: 52 |

| | |
|--|----------------------------|
| Taxpayer Information | [collapse] |
| SCOTT,JOHN III 584 E HAMILTON LN BATTLE CREEK, MI 49015-4742 | |

| | | | | |
|--|--------------------------|-------------------------------|----------------------|----------------------------|
| General Information for Tax Year 2009 | | | | [collapse] |
| Property Class: | 401 | Assessed Value: | \$68,849 | |
| School District: | 13090 - LAKEVIEW SCHOOLS | Taxable Value: | \$68,849 | |
| State Equalized Value: | \$68,849 | Map # | 625SE | |
| User Number Indx: | | Date of Last Name Chg: | 04/08/2008 | |
| Date Filed: | 03/04/2008 | | | |
| Principal Residence Exemption (2009 May 1): | 100.0000 % | | | |
| Principal Residence Exemption (2009 Final): | 100.0000 % | | | |
| Principal Residence Exemption (2010 May 1): | 100.0000 % | | | |
| Previous Year Info | MBOR Assessed | Final S.E.V. | Final Taxable | |
| 2008 | \$68,849 | \$68,849 | \$68,849 | |
| 2007 | \$70,922 | \$70,922 | \$61,621 | |

| | | | | |
|-------------------------------|----------|---------------------------------|------------|----------------------------|
| Land Information | | | | [collapse] |
| Acreage: | 0.50 | Frontage: | 145.00 Ft. | |
| Zoning Code: | R1B | Depth: | 150.00 Ft. | |
| Land Value: | \$42,816 | Mortgage Code: | N/A | |
| Land Improvements: | \$0 | Lot Dimensions/Comments: | | |
| Renaissance Zone: | NO | | | |
| ECF Neighborhood Code: | 90300 | | | |

| | |
|--|----------------------------|
| Legal Information for 4260-07-971-0 | [collapse] |
| INWOOD LOT 21 | |

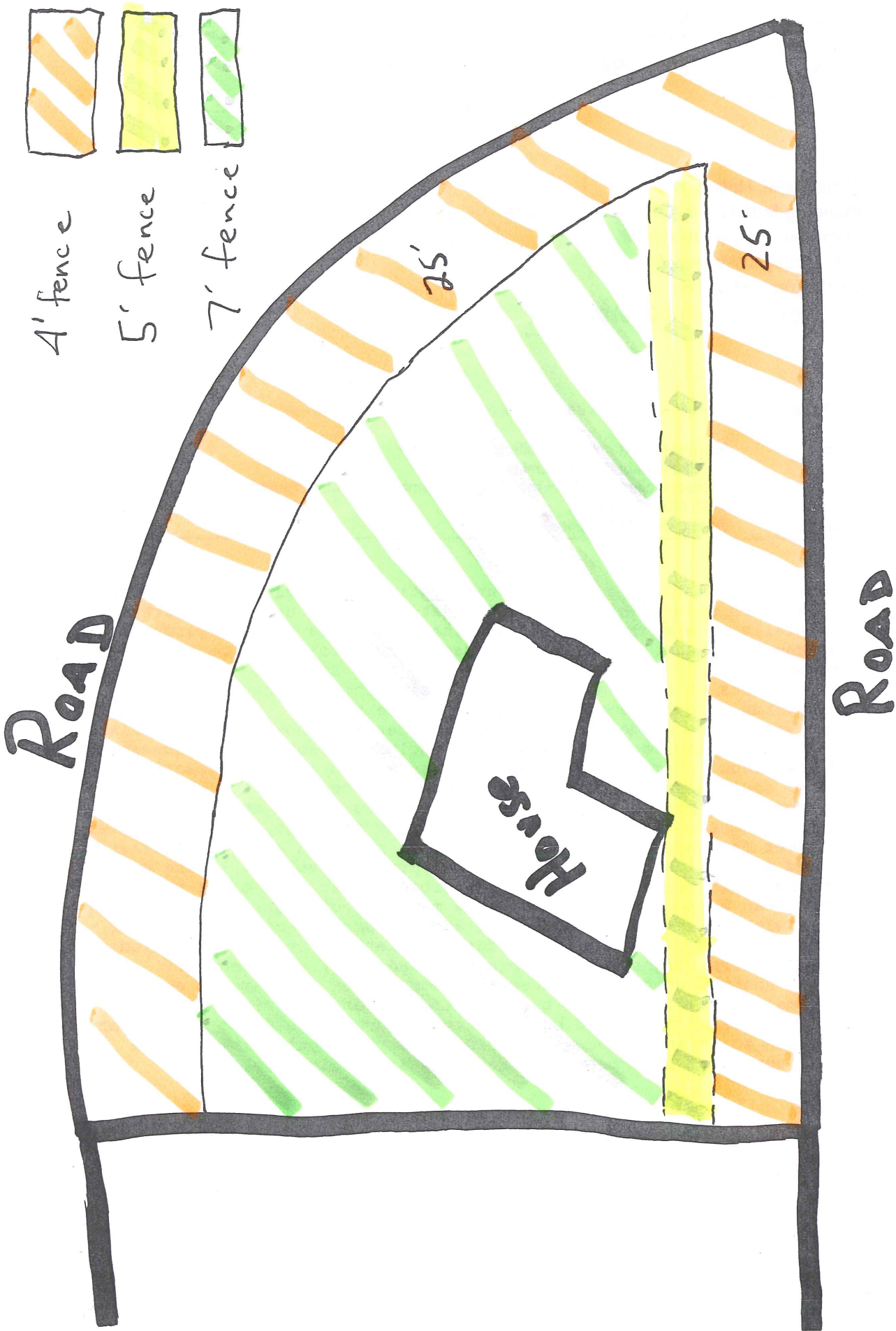
Sales Information

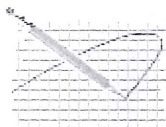
| 4 sale record(s) found. | | | | | | |
|-------------------------|-------------|------------|----------------------------|------------------------------|---------------|-------------|
| Sale Date | Sale Price | Instrument | Grantor | Grantee | Terms Of Sale | Liber/ Page |
| 03/06/2008 | \$94,000.00 | 05 | SCOTT TRUST,JOHN JR & MARY | SCOTT,JOHN III | 06 FAMILY | 3355/0087 |
| 10/28/2007 | \$1.00 | 12 | SCOTT,JOHN JR | (DECEASED) | 12 QCD/OTHER | 0000/0000 |
| 10/14/2006 | \$0.00 | 12 | SCOTT,MARY L | (DECEASED) | 12 QCD/OTHER | 0000/0000 |
| 10/02/1981 | \$0.00 | 12 | SCOTT,JOHN JR & MARY L | SCOTT TRUST,JOHN JR & MARY L | 12 QCD/OTHER | 3355/0082 |

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[Privacy Policy](#)

1298.05 (b) Residential Fence Code





Christine M
Hilton/BattleCreek
12/28/2009 10:09 AM

To Glenn F Perian/BattleCreek@BattleCreek
cc
bcc
Subject Fw: Zoning Board of Appeals....Z-01-10

Christine M. Hilton, AICP
Planning Supervisor, City of Battle Creek
Commerce Pointe Building
77 E. Michigan Avenue, Ste 204
Battle Creek, MI 49017
Tel: (269) 966-3320 Fax: (269) 966-3529

----- Forwarded by Christine M Hilton/BattleCreek on 12/28/2009 10:09 AM -----

From: Michael Rollert <michael.rollert@gmail.com>
To: cmhilton@ci.battle-creek.mi.us
Cc: Michael Rollert <michael.rollert@gmail.com>, holmwall@comcast.net
Date: 12/27/2009 07:48 PM
Subject: Zoning Board of Appeals....Z-01-10

I have concerns for the expanded utilization of previously open grass covered yard space. While I concede that this is a unique property, essentially on a peninsula, it none-the-less faces 8 front yards on East Hamilton Lane. The only real "back yard" area would be that space between the Scott home and adjacent house that faces Brookfield Court. The occupants of these several homes facing this structure with 3 front yards, should be afforded a comparable view of open, unfenced front yard space as do the majority of other area homeowners on this street. Generally, a front yard would include personalized landscaping and plantings. A smaller vegetable garden augmented with flowering plants, could already push on the window of acceptability, especially with the close proximity to the street. But to expand this with additional garden running the entirety of my frontage, and plant poles for "deer fencing," seems decidedly out of place in a city subdivision lot and may well negatively impact area property values. In the spirit of being fair neighbors, I feel comfortable that most of us can accept a an appropriately sized, well managed, city garden, if it can comply with existing city codes. To address Scott's concern for deer eating his produce, I would consider a variety of techniques including motion sensors, lights, water sprays, human hair, and scents of various animals that might deter the deer. Given the size of an adult deer, motivated to graze, I question if any fencing suitable for a city subdivision lot would be effective, hence I would not support any exemption to existing codes and guidelines that would diminish the visual appeal of this property viewed by area neighbors.



P1020119.jpg

View from inside my garage. Notice previous garden space (with wooden base) expanded south to include entirety of my frontage facing East Hamilton Lane.



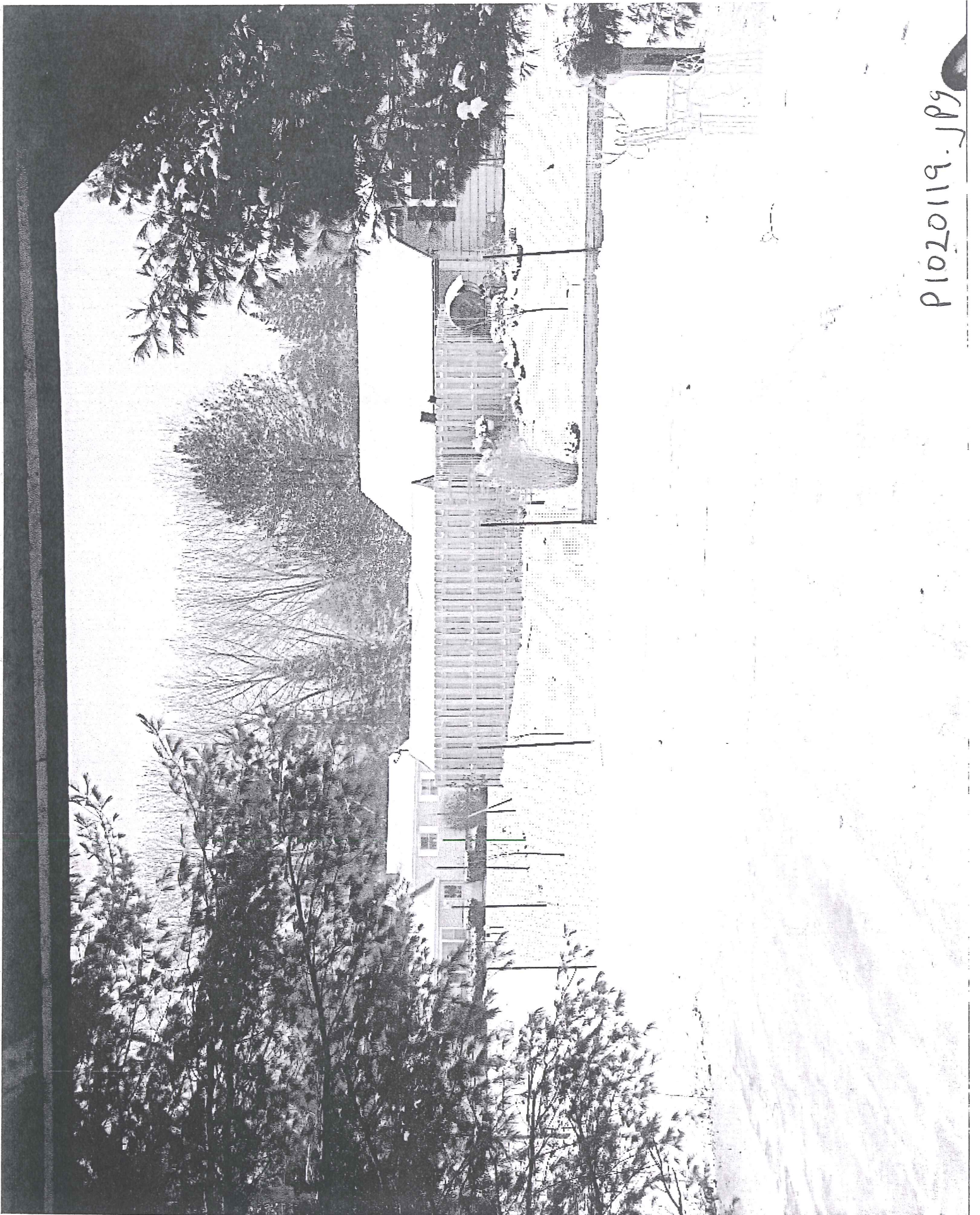
P1020118.jpg

View from East Hamilton Lane showing north edge of fence

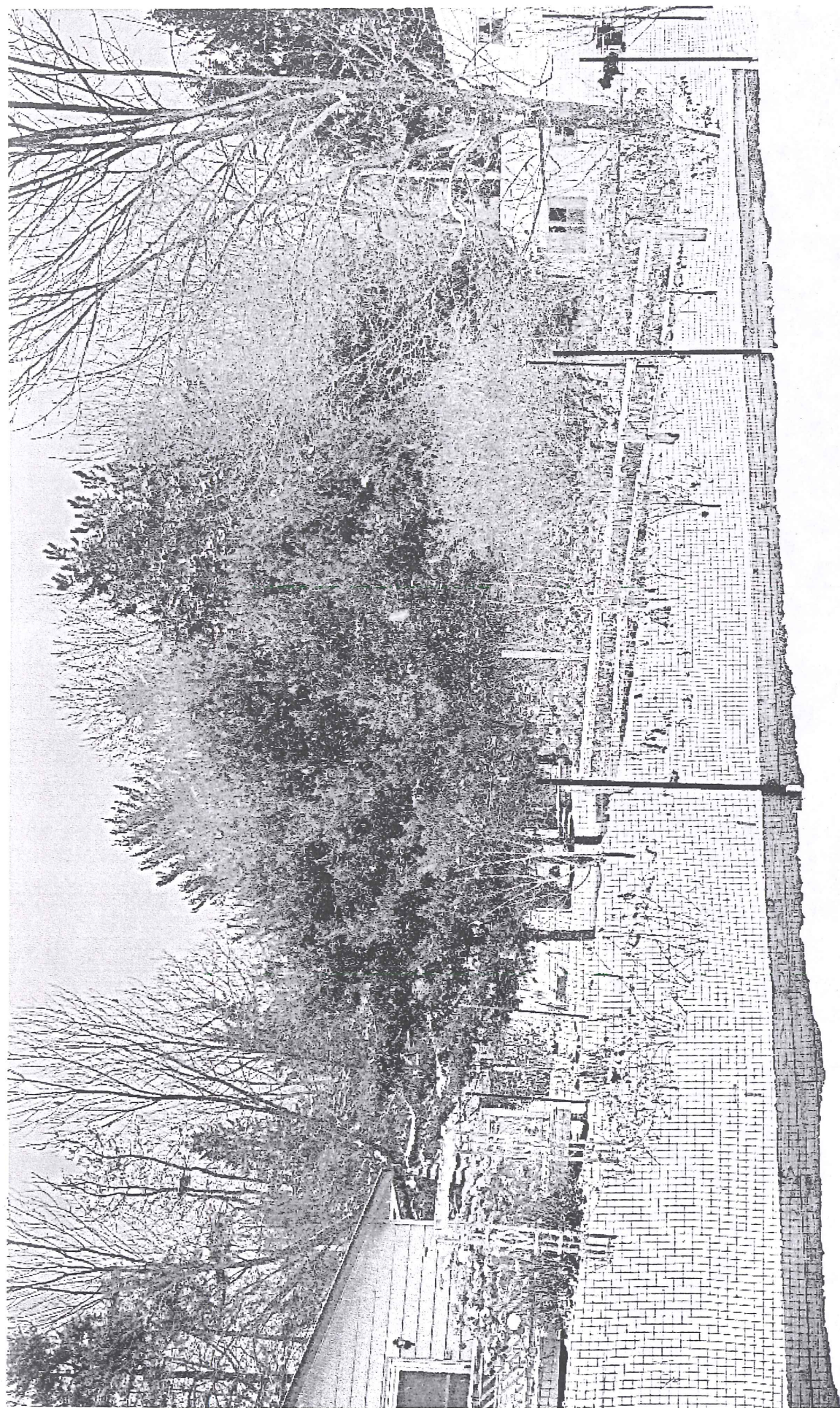


p_00348.jpg

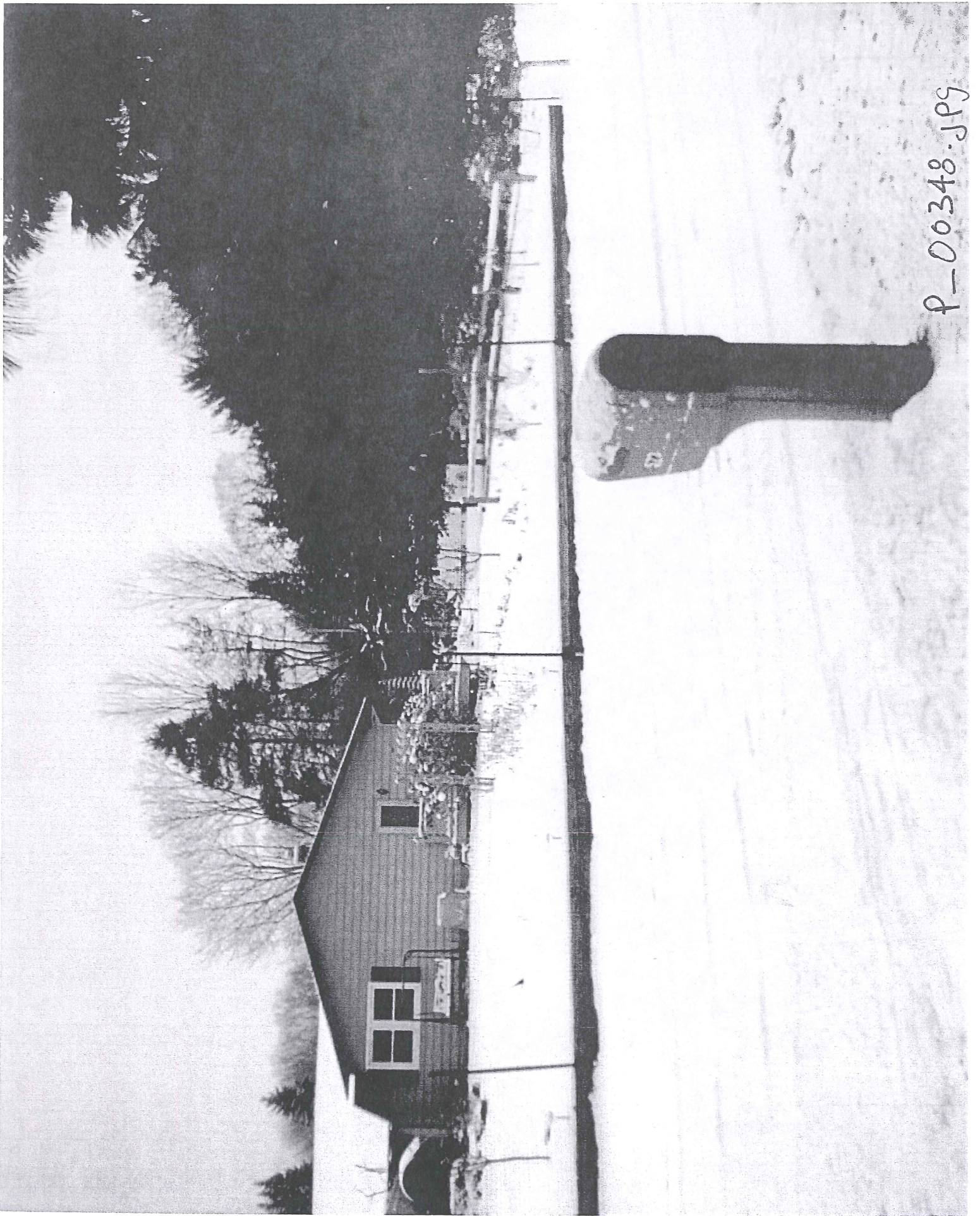
View from my front yard showing my mailbox and proximity of fencing to East Hamilton Lane.



P1020119.jpg



P1020118.JPG



P-00348.JPG



Christine M.
Hilton/BattleCreek
12/28/2009 10:10 AM

To: Glenn F Perian/BattleCreek@BattleCreek
cc
bcc

Subject: Fw: Zoning Board of Appeals....Z-01-10

Christine M. Hilton, AICP
Planning Supervisor, City of Battle Creek
Commerce Pointe Building
77 E. Michigan Avenue, Ste 204
Battle Creek, MI 49017
Tel: (269) 966-3320 Fax: (269) 966-3529

----- Forwarded by Christine M Hilton/BattleCreek on 12/28/2009 10:10 AM -----

From: Glenn & Marcia Holmwall <holmwall@comcast.net>
To: Michael Rollert <michael.rollert@gmail.com>
Cc: "Chris M. Hilton - ZBA (city)" <cmhilton@ci.battle-creek.mi.us>
Date: 12/28/2009 12:10 AM
Subject: Re: Zoning Board of Appeals....Z-01-10

Mike.... Good E-Mail and well made points. Have you had any more discussions about possible solutions with Jack Scott? I really think that the pictures add a lot to your story. I would work with Chris Hilton and see if she is going to have a city photographer (or some one with a camera from the Planning Dept) to take and use some of their photos. They have some good aerial photos of the whole city (from the summer) and they usually put a "ZBA Board package" together just in case all the members hadn't had the time to actually look at the property and associated issues. Also, you might want to include...

- Dimensions of the garden
- Dimensions of the back yard storage areas with the 6-ft high solid wooden fence
- Can you work out a solution before the meeting with John Scott or the Planning Dept (Chris Hilton)?
- What are your recommendations (Just say NO to the zoning appeal, or accept John's proposal, or a new compromise)
- You might want to take a petition around for the neighbors to sign on what you propose
- Bring a number of people to the ZBA meeting in Jan. The Board always likes to see people

----- Original Message -----

From: "Michael Rollert" <michael.rollert@gmail.com>
To: cmhilton@ci.battle-creek.mi.us
Cc: "Michael Rollert" <michael.rollert@gmail.com>, holmwall@comcast.net
Sent: Sunday, December 27, 2009 7:47:07 PM GMT -05:00 US/Canada Eastern
Subject: Zoning Board of Appeals....Z-01-10

I have concerns for the expanded utilization of previously open grass covered yard space. While I concede that this is a unique property, essentially on a peninsula, it none-the-less faces 8 front yards on East Hamilton Lane. The only real "back yard" area would be that space between the Scott home and adjacent house that faces Brookfield Court. The occupants of these several homes facing this structure with 3 front yards, should be afforded a comparable view of open, unfenced front yard space as do the majority of other area homeowners on this street. Generally, a front yard would include personalized landscaping and plantings. A smaller vegetable garden augmented with flowering plants, could already push on the window of acceptability, especially with the close proximity to the street. But to expand this

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View from inside my garage. Notice previous garden space (with wooden base) expanded south to include entirety of my frontage facing East Hamilton Lane.

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View from East Hamilton Lane showing north edge of fence

[image/jpeg:p_00348.jpg]

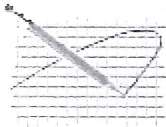


P1020119.jpg

View from my front yard showing my mailbox and proximity of fencing to East Hamilton Lane.



P1020118.jpgp_00348.jpg



Christine M
Hilton/BattleCreek
01/04/2010 02:30 PM

To Glenn F Perian/BattleCreek@BattleCreek
cc
bcc

Subject Fw: Zoning Board of Appeals....Z-01-10

This email, and the one with photos from Michael Rollert should be included in the board packet...

Christine M. Hilton, AICP
Planning Supervisor, City of Battle Creek
Commerce Pointe Building
77 E. Michigan Avenue, Ste 204
Battle Creek, MI 49017
Tel: (269) 966-3320 Fax: (269) 966-3529

----- Forwarded by Christine M Hilton/BattleCreek on 01/04/2010 02:29 PM -----

From: Glenn & Marcia Holmwall <holmwall@comcast.net>
To: cmhilton@ci.battle-creek.mi.us
Date: 12/24/2009 02:34 PM
Subject: Zoning Board of Appeals....Z-01-10

Christine....I am sending this to you because I will be out of town on 12 Jan 2010 and unable to make the 4PM ZBA meeting that day. I hope that you will share this with the ZBA Board members. I spoke with you and Glen (also from city planning) about this appeal on Wednesday (23 Dec) in your office and I have reviewed the subject appeal provided by John Scott who resides at 584 E. Hamilton Lane. I have also spoken with some of the neighbors. There are several facts that make this a difficult issue:

- 1...The property has what the city defines as a "front yard" on three side of the the house.
- 2...John Scott has turned his yard on the east side of the house into a flower, vegetable and fruit tree garden
- 3...This garden (approx 80' x 50') is mainly on the east side of the house and goes to within 5 ft' of the street
- 4...This property and garden are substantially higher than the neighbors' homes across the street
- 5...Small animals as well as the many deer in the area had eaten the flowers, vegetables and fruit trees in the garden
- 6...Standard fencing did not deter small animals from going under the fence or the deer from jumping over it
- 7...Rigid black wire (or deer) fencing (7 ft high) is now being used. Heavy black netting was used earlier to extend the height
- 8...This fencing and netting strategy did keep the animals out of the garden, however....
- 9...The 2 or 3 residences across the street from the garden have their front yards looking up, into this garden
- 10...The neighbors are very concerned with the appearance of John Scott's garden from their front doors
- 11...And ultimately the neighbors are concerned with a 3rd party's evaluation of their homes' selling prices and values with the garden

Here are a few more questions that need to be answered: John Scott proposed a 6 ft high fence in lieu of the BC zoning ordinance maximum 4 ft high fence.

- 1...Would a 6 ft fence (as requested in the appeal) be high enough to keep deer out of the garden?
- 2...Where is the height of the fence measured from? The ground level of the vertical posts? or from top

of grading timbers?

3...Will the heavy black netting be used to supplement the proposed 6 ft high fence in the future?

4...Is the proposed fence to be a wooden fence, cyclone fence, or a solid wire fence?

5...Would the proposed 6 ft high fence block the already limited view for the neighbors across the street?

6...How far away from the street (E. Hamilton Ln) is a front yard fence allowed to be? 3 ft? 6 ft? or more?

7...Are there other fenced-off areas out of compliance with city code (size, proximity to house, height, etc)?

I know that John Scott has tried to come up with a mutual solution for both him and his neighbors. I feel that a compromise is near. Once again, I support the city's zoning ordinances as they are currently stated, but I believe that if there are any further negotiations required, they must happen among the neighbors, not with the Zoning Board of Appeals. Thanks for your time.....Glenn